

**IN THE SUPREME COURT OF THE**  
**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an appeal in terms of section 5 C of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 against a judgment delivered by the Provincial High Court exercising its jurisdiction under section 5 A of the said Act.

S C Appeal No. 62/2016

SC/HC/CA/LA No. 407/2012

WP/HCCA/COL/31/2009/RA

DC Colombo case No. 36038/MR

Hon. Attorney General,

Attorney General's Department,

Colombo 12.

**DEFENDANT - PETITIONER - APPELLANT**

-Vs-

M S M Najimudeen and 02 others

All of 93 2/4,

Prince Street,

Colombo 11,

Carrying on a business in partnership under the name and style and firm of Artex Garments of 93 2/4,

Prince Street,

Colombo 11.

**PLAINTIFF-RESPONDENT-RESPONDENTS**

**Before:      BUWANEKA ALUVIHARE PC J**

**VIJITH K. MALALGODA PC J**

**P PADMAN SURASENA J**

**Counsel:**

Sumathi Dharmawardene PC ASG with Sureka Ahmed SC for the Defendant  
- Petitioner - Appellant.

Senany Dayaratne for Plaintiff - Respondent - Respondent with Nishadi Wickramasinghe instructed by G S Thavarasa.

Argued on: 16 - 01 - 2020

Decided on: 12 - 03 - 2020

### **P Padman Surasena J**

The Plaintiff - Respondent - Appellant (hereinafter sometimes referred to as the Plaintiff) filed a plaint in the District Court of Colombo seeking to recover damages for the wrongful detention by Sri Lanka Customs, 96 bales of fabric, which the Plaintiffs had imported. The Plaintiff in the said plaint had alleged that the Sri Lanka Customs had wrongfully seized the said items on 15-07-1988 and continued to keep them in detention until the Plaintiff filed a writ application in the Court of Appeal seeking a writ of Mandamus to compel the Sri Lanka Customs to act in terms of law. The Plaintiff has further stated in his plaint that in the course of the proceedings of the said case (C A writ application No. 159/2000) in the Court of Appeal, the parties had agreed to settle the matter on the terms and conditions set out in the motion dated 25-09-2000. Accordingly, the Sri Lanka Customs had released the 96 bales of fabric to the Plaintiff on 23-02-2001. It is the complaint of the Plaintiff that the Sri Lanka Customs had breached its legal duty either to hold an inquiry into the matter if it had taken the view that the Plaintiff had violated any law or to release the said consignment upon payment of due customs

levies. The Plaintiff has further stated in the plaint that he was compelled to dispose the said 96 bales of fabric (after their release) at a low price, which had incurred a loss to him.

The Defendant-Petitioner-Appellant (hereinafter sometimes referred to as the Defendant) filed its answer stating that the detention of the relevant goods was an official act by the officers of the Sri Lanka Customs and therefore the Plaintiff is not entitled to claim any damages from the Defendant. The Defendant had further stated that it is not open for the Plaintiff to maintain this action as the matter was settled in the Court of appeal. The Defendant had prayed that the plaint be dismissed.

At the conclusion of the trial, the learned District Judge delivered the judgment dated 22-07-2009 in favour of the Plaintiff holding that the Plaintiff is entitled to recover the damages.

The Defendant being aggrieved by the said judgment of the learned District Judge has filed an application for revision in the Provincial High Court canvassing the said judgment.

At the conclusion of the argument of the said revision application, the Provincial High Court, having considered the material, by its order dated 23-

08-2012 has dismissed the said revision application on the basis that there are no exceptional circumstances to exercise the revisionary jurisdiction of Court as the judgment under challenge was an appealable one.

This Court, when the leave to appeal application pertaining to the instant appeal was supported, having heard the submissions of the learned Deputy Solicitor General for the Defendant and the learned Counsel for the Plaintiff, by its order dated 15-03-2016, has granted leave to appeal in respect of the following questions of law.

- 1) *Did their Lordships of the Civil Appellate High Court err in law by failing to consider the legal effect and the spirit of the settlement between the parties before a Court of law, especially the settlement before the Court of Appeal?*
- 2) *Did their Lordships of the Civil Appellate High Court err in law by deciding that the detention of the fabric is a statutory power exercised by the customs officers under the Customs Ordinance and thus the officers are protected against claims for damages?*
- 3) *Did their Lordships of the Civil Appellate High Court err in law by not considering that the Plaintiff - Respondents had not availed itself of*

*the statutory relief available in the Customs Ordinance to obtain damages and the aforesaid District Court action for damages was in contravention of the Customs Ordinance?*

- 4) *Did their Lordships of the Civil Appellate High Court err in law by not considering that the Plaintiff - Respondent's action for damages was prescribed under the Customs Ordinance?*
- 5) *Did their Lordships of the Civil Appellate High Court err in law by failing to consider that the total disregard of the settlement entered into by the learned District Court judge would in fact amount to exerting supervisory jurisdiction over the Court of Appeal?*
- 6) *Did their Lordships of the Civil Appellate High Court err in law by failing to appreciate that the Civil Appellate High Court exercises its revisionary jurisdiction in the interests of due administration of justice?*

Perusal of the impugned order of the Provincial High Court clearly shows that the learned Judges of the High Court had not considered merits of the case. The sole question they had considered is the question whether there are any exceptional circumstances which warrant their intervention in the matter to exercise their revisionary powers. Therefore, one does not find

any decision made by the Provincial High Court on the questions of law set out in questions of law No's 1-5. I am therefore of the view that the said questions of law are misconceived. Further, this Court is not in a position to decide whether the Provincial High Court has erred in its decision on the said points as it has in fact not adjudicated on any of them.

As has also been pointed out by the Petitioner in his written submissions<sup>1</sup>, the primary question this Court has to resolve at the outset is whether in the given circumstances, there are any exceptional circumstances, which warrant the intervention of the Court at the stage of the said revision application. Although not clear enough, question of law No. 6 appear to be on that line.

The learned Additional Solicitor General in the course of his submissions conceded that it is imperative on the Defendant to show the existence of exceptional circumstances before the Provincial High Court. It was his submission that the exceptional circumstances relied upon by the Defendant were set out in paragraph 4 of the revision application filed before the

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<sup>1</sup> Paragraphs 28-35 of the written submissions of the Petitioner.

Provincial High Court. Thus, I would reproduce the said paragraph 4 below.

It is as follows.

*"... Being aggrieved by the said judgment, the Petitioner seek to invoke the reversionary jurisdiction of Your Lordships Court on the following among other exceptional circumstances that may be urged by the Counsel at the hearing of this revision.*

- i. The Learned District Judge erred in determining that the "final and conclusive" settlement entered by the parties in the Court of Appeal cannot be considered as final and conclusive.*
- ii. The learned judge erred in determining that the District Court has jurisdiction to determine the action of the Plaintiff.*
- iii. The learned District Judge erred in determining that the Plaintiff Respondents cannot maintain an action for damages as the Customs officers detained the goods whilst exercising statutory powers under the Customs ordinance.*
- iv. The learned District Judge erred in failing to consider that the Court of Appeal had concluded that the Plaintiff Respondents attempted to remove the 96 bales illegally.*

- v. *The learned Judge has erred in determining that there was a delay in releasing the goods.*
- vi. *The learned Judge has erred in deciding that there is no evidence to conclude that the settlement entered in to in the Court of Appeal case no. 159/2000 is final and conclusive.*
- vii. *The Learned Judge has erred in not considering that the Plaintiff Respondents have not paid for the material to the buyer.*
- viii. *The Learned Judge has failed to consider that the Plaintiff Respondents are only entitled to CMT charges for the entire transaction.*
- ix. *That the said judgement is contrary to law and against the weight of the evidence presented during the case.*
- x. *That the learned District Judge has erred in evaluating the evidence led on behalf of the Defendant - Petitioner.*
- xi. *The learned District Judge has erred in relying on the Defendant - Petitioner's evidence to prove the Plaintiff - Respondent's case.*
- xii. *The learned District Judge had given undue weight to the evidence of the Plaintiff - Respondents and that of the evidence of the witnesses.*

- xiii. *That the learned Judge has erred in evaluating the evidence relating to the documents led at the trial and failed to evaluate the evidence led by Defendant Petitioner in that regard.*
- xiv. *The learned Judge has failed to give reasons.*
- xv. *The learned Judge has disregarded/ misinterpreted the evidence led on behalf of the Defendant - Petitioner.*
- xvi. *The learned District Judge has failed to consider that the Plaintiff - Respondents have not produced evidence on a balance of convenience to prove the wrongful/ illegal acts of the Defendant - Petitioner.*
- xvii. *The learned District Judge has failed to consider that the Plaintiff - Respondents have not produced evidence on a balance of convenience to prove damages and/or misdirected herself in calculating damages or has awarded damages in excess than warranted in the case.*
- xviii. *The learned District Judge has based the judgment on extraneous and irrelevant facts. .. "*

Learned Additional Solicitor General did not seek to controvert the fact that the Defendant in fact had lodged an appeal against the judgment of the District Court and that the said appeal was filed out of the time stipulated

by law. Further he also did not seek to controvert the finding by the Provincial High Court that the Defendant has filed the revision application after realizing that it cannot maintain the said appeal and that the grounds it has pleaded in the revision application are the same as in the appeal it had filed.

Grounds set out in the revision application by the Defendant are merely grounds of appeal which are centered around the issues framed in the trial.

Our Courts have consistently held that the revisionary power of Courts is an extraordinary power and that the Courts must exercise it only in exceptional circumstances when the law has expressly provided the aggrieved party a right of appeal.

The Defendant has had an alternative remedy available. In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The Defendant has not been successful in convincing Court that the grounds he had urged have any exceptional character which is sufficient to move Court to exercise its discretionary revisionary power. Thus, this Court has no reason to disagree with the conclusion of the Provincial High Court that there are no exceptional circumstances to invoke the revisionary jurisdiction of the Court. In these

circumstances and for the foregoing reasons, the appeal is dismissed without costs.

**JUDGE OF THE SUPREME COURT**

**BUWANEKA ALUWIHARE PC J**

I agree,

**JUDGE OF THE SUPREME COURT**

**VIJITH K. MALALGODA PC J**

I agree,

**JUDGE OF THE SUPREME COURT**